

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

## SENATE ENROLLED ACT No. 266

AN ACT to amend the Indiana Code concerning health.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 5-10-8-7.7, AS AMENDED BY P.L.196-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 7.7. (a) As used in this section, "covered individual" means an individual who is covered under a health care plan.

(b) As used in this section, "health care plan" means:

- (1) a self-insurance program established under section 7(b) of this chapter to provide group health coverage; or
- (2) a contract entered into under section 7(c) of this chapter to provide health services through a prepaid health care delivery plan.

(c) As used in this section, "health care provider" means a:

- (1) physician licensed under IC 25-22.5; or
- (2) hospital licensed under IC 16-21;

that provides health care services for surgical treatment of morbid obesity.

(d) As used in this section, "morbid obesity" means:

- (1) a body mass index of at least thirty-five (35) kilograms per meter squared, with comorbidity or coexisting medical conditions such as hypertension, cardiopulmonary conditions, sleep apnea,

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or diabetes; or

(2) a body mass index of at least forty (40) kilograms per meter squared without comorbidity.

For purposes of this subsection, body mass index is equal to weight in kilograms divided by height in meters squared.

(e) Except as provided in subsection (f), the state shall provide coverage for nonexperimental, surgical treatment by a health care provider of morbid obesity:

(1) that has persisted for at least five (5) years; and

(2) for which nonsurgical treatment that is supervised by a physician has been unsuccessful for at least ~~eighteen (18)~~ six (6) consecutive months.

(f) The state may not provide coverage for surgical treatment of morbid obesity for a covered individual who is less than twenty-one (21) years of age unless two (2) physicians licensed under IC 25-22.5 determine that the surgery is necessary to:

(1) save the life of the covered individual; or

(2) restore the covered individual's ability to maintain a major life activity (as defined in IC 4-23-29-6);

and each physician documents in the covered individual's medical record the reason for the physician's determination.

SECTION 2. IC 16-40-3-2, AS ADDED BY P.L.196-2005, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. (a) **As used in this section, "major complication" means a complication from surgical treatment for morbid obesity that:**

(1) **requires an extended hospitalization, additional surgical treatment, or invasive drug therapy within thirty (30) days of the original surgical treatment; or**

(2) **results in a permanent disability.**

(b) **As used in this section, "serious side effect" means a nutritional deficiency that requires hospitalization or invasive therapy.**

(c) A physician who is licensed under IC 25-22.5 and who performs a surgical treatment for the treatment of morbid obesity shall **do the following:**

(1) **Before performing surgery, discuss the following with the patient:**

(A) **The requirements to qualify for the surgery.**

(B) **The details of the surgery.**

(C) **The possible complications from the surgery.**

(D) **The side effects from the surgery, including lifestyle**

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**changes and dietary protocols.**

~~(1)~~ **(2)** Monitor the patient for five (5) years following the patient's surgery, **unless the physician is unable to locate the patient after making reasonable efforts.** ~~and~~

~~(2)~~ **(3)** Report **before June 30 and before December 31** of each year:

(A) to; and

(B) in a manner prescribed by;

the state department any death, ~~or~~ **serious side effect, or major complication** of the patient.

~~(b) (d)~~ **The A** report required ~~in subsection (a)~~ **by subsection (c)(3)** must include the following information:

(1) The gender of the patient.

(2) The name of the physician who performed the surgery.

(3) The location where the surgery was performed.

(4) Information concerning the death, **serious side effect, or major complication** and the circumstances in which the death, **serious side effect, or major complication** occurred.

**(5) The comorbidities, body mass index, and waist circumference of the patient:**

**(A) at the time of the surgical treatment; and**

**(B) thirty (30) days, ninety (90) days, and one (1) year after surgical treatment.**

**(6) Whether the patient has had previous abdominal surgery.**

SECTION 3. IC 16-40-3-3, AS ADDED BY P.L.196-2005, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. (a) The state department shall collect and maintain the information reported to the state department under section 2 of this chapter.

(b) The reports made under ~~section 2(a)(2)~~ **section 2(c)(3)** of this chapter are ~~public records and are confidential.~~ **However, the state department may compile statistical reports from information contained in reports made under section 2(c)(3) of this chapter. Any statistical report is subject to public inspection. However, the state department may not release any information contained in the reports that the state department determines may reveal the patient's identity.**

SECTION 4. IC 27-8-14.1-4, AS AMENDED BY P.L.196-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. (a) Except as provided in subsection (b), an insurer that issues an accident and sickness insurance policy shall offer coverage for nonexperimental, surgical treatment by a health care

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provider of morbid obesity:

- (1) that has persisted for at least five (5) years; and
- (2) for which nonsurgical treatment that is supervised by a physician has been unsuccessful for at least ~~eighteen (18)~~ **six (6)** consecutive months.

(b) An insurer that issues an accident and sickness insurance policy may not provide coverage for a surgical treatment of morbid obesity for an insured who is less than twenty-one (21) years of age unless two (2) physicians licensed under IC 25-22.5 determine that the surgery is necessary to:

- (1) save the life of the insured; or
- (2) restore the insured's ability to maintain a major life activity (as defined in IC 4-23-29-6);

and each physician documents in the insured's medical record the reason for the physician's determination.

SECTION 5. IC 27-13-7-14.5, AS AMENDED BY P.L.196-2005, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 14.5. (a) As used in this section, "health care provider" means a:

- (1) physician licensed under IC 25-22.5; or
- (2) hospital licensed under IC 16-21;

that provides health care services for surgical treatment of morbid obesity.

(b) As used in this section, "morbid obesity" means:

- (1) a body mass index of at least thirty-five (35) kilograms per meter squared with comorbidity or coexisting medical conditions such as hypertension, cardiopulmonary conditions, sleep apnea, or diabetes; or
- (2) a body mass index of at least forty (40) kilograms per meter squared without comorbidity.

For purposes of this subsection, body mass index equals weight in kilograms divided by height in meters squared.

(c) Except as provided in subsection (d), a health maintenance organization that provides coverage for basic health care services under a group contract shall offer coverage for nonexperimental, surgical treatment by a health care provider of morbid obesity:

- (1) that has persisted for at least five (5) years; and
- (2) for which nonsurgical treatment that is supervised by a physician has been unsuccessful for at least ~~eighteen (18)~~ **six (6)** consecutive months.

(d) A health maintenance organization that provides coverage for basic health care services may not provide coverage for surgical

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treatment of morbid obesity for an enrollee who is less than twenty-one (21) years of age unless two (2) physicians licensed under IC 25-22.5 determine that the surgery is necessary to:

- (1) save the life of the enrollee; or
- (2) restore the enrollee's ability to maintain a major life activity (as defined in IC 4-23-29-6);

and each physician documents in the enrollee's medical record the reason for the physician's determination

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President of the Senate

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President Pro Tempore

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Speaker of the House of Representatives

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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